

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Health Resources and Services Administration
Indian Health Service
Rockville, Maryland

INDIAN HEALTH SERVICE CIRCULAR NO. 85-2

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

Sec.

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1. PURPOSE; The purpose of this circular-is to establish policies and procedures for fulfilling the Equal Employment Opportunity (EEO) Program responsibilities in the Indian Health Service (IHS).
2. COVERAGE. This circular applies to all IHS employees and applicants in all pay systems, i.e. Commissioned Corps, Civil Service (Competitive and Excepted), and Wage Grade.
3. AUTHORITY. The establishment of this circular is in accordance with Title 29, CFR, Part 1613, "Equal Employment in the Federal Government" Administrative Plans, Regulations and Guidelines as described in HHS Instruction 1613-3, HHS Transmittal 84.23 (9-28-84), including other statutory and Regulatory requirements as listed below.

Civil Rights Act of 1964.

Age Discrimination Act of 1967.

Rehabilitation Act of 1973.

EEO Act of 1972.

Equal Pay Act, 1963 amended- in 1974.

Uniform Guidelines on Employee Selection Procedures.

Executive Order 11478. .

Section 717 of Title VII of the Civil Rights Act of 1964.

Title III of Civil Service Reform Act of 1978 (The Garcia Amendment).

Part 1604.11 of EEOC Guidelines on Discrimination Based on Sex.

PHS Affirmative Action Program and Federal Equal Opportunity-
Recruitment Program Plan FY 1982 - 1986.

A description of these authorities is provided as Appendix A.

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4. BACKGROUND. Indian preference statutes and implementing regulations are concerned with employment, and as such, are personnel laws and regulations which are applied by all IHS Area personnel offices as a normal part of their day-to-day activities. The coordination of the development of the affirmative action program and plan, as well as the administration of the EEO complaint process are clearly principal EEO functions which impact the career opportunities of all IHS employees. The EEO objectives . continue to be the elimination of the underrepresentation of minorities and women throughout the Federal work force and their inclusion in the higher level policy making and supervisory positions at a rate commensurable with population distributions. Therefore, the overriding purpose of the EEO program in the IHS is to assure equal treatment and protection of the rights of all employees and applicants. This can be met with the enforcement of rights for all persons regardless of race, color, religion, national origin, sex, age, or handicap. It is the policy of the Public Health Service (PHS), and therefore required of the IHS, that recruitment within IHS will be opened to members of all groups whenever initial efforts fail to produce qualified Indian candidates.
5. POLICY. All managers, supervisors, and employees are charged with the responsibility of furthering the goals of EEO and taking actions which clearly demonstrate that the principles of EEO are incorporated into an affirmative action program. This includes ensuring that:
 - A. The responsibilities for furthering EEO, by assuring affirmative action in fostering and promoting full equal opportunity for all employees and applicants in the IHS, are an integral part of every manager and supervisor's performance standards and appraisal.
 8. The Headquarters (HQs) Office will have a full-time EEO Manager reporting directly to the Director, IHS with necessary staff and resources to implement a viable program.
 - C. Each Area Office will have a full-time EEO Manager reporting to the Area Director to implement a viable program.
 - D. Each Area/Program Office will designate one or more Special Emphasis Program Manager(s). Where these responsibilities are assigned as collateral duties, they will be attached to the incumbent's position description. In the performance of these duties, the Special Emphasis Program Coordinator(s) will report to the EEO Manager.
 - E. Each Area/Program Office will designate Management Representative(s) who are authorized to negotiate informal resolutions of EEO complaints. These responsibilities are assigned as collateral duties and attached to the incumbent's position description. In the

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performance of these duties, the Management Representative(s) will report to the Area/Program Director.

Requests for exceptions to 5. C. -.D. above, will be considered only when the Area/Program Director provides sufficient written justification to the Director, IHS. The Director, IHS will issue a written decision concerning approval or disapproval of the request.

6. EEO ROLES AND RESPONSIBILITIES.

Following are the major EEO roles and responsibilities for IHS management officials:

A. Director, IHS

The Director, IHS exercises personal leadership in establishing, maintaining, implementing, and evaluating a continuing affirmative action program designed to promote equal opportunity. The Director,

- establishes IHS-wide EEO policies, procedures, and programs (in accordance with HHS, PHS, and HRSA policies);
- determines EEO goals and objectives;
- reviews, monitors, and evaluates managerial and supervisory performance to ensure adherence to the equal employment opportunity program and policy.

B. HQs EEO Manager

The HQs EEO Manager exercises personal leadership in establishing, maintaining, implementing, and evaluating a continuing affirmative action program designed to promote equal opportunity. The HQs EEO Manager will:

- advise the Director IHS and Area/Program EEO Managers with respect to the preparation of EEO plans, procedures, regulations, reports, and other matters;
- provide overall Leadership, advice, and coordination for IHS EEO activities;
- formulate affirmative action for EEO policies, procedures, and programs for IHS

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implement and interpret EEO policies, procedures, and programs;

provide focal point and liaison for contact with DHHS, PHS, and HRSA EEO program officials;

monitor and evaluate the impact of the IHS EEO program and recommend improvements or corrections needed;

ensure that equal employment for women is an integral part of the IHS's overall program by assigning to the Federal Women's Program Managers the function of advising the EEO Manager on matters affecting the employment and advancement of women;

establish and implement an EEO evaluation program.

c. Area/Program Director

The Area/Program Director exercises personal leadership in establishing, maintaining, implementing, and evaluating a continuing affirmative action program in the Area/Program Office designed to promote equal-opportunity. The Area/Program Director will:

allocate sufficient staff and resources' to implement a results-oriented Affirmative Action Program (AAP)/Federal Equal Opportunity Recruitment Program (FEORP) Plan;

maintain a work climate that is free of discrimination, including sexual harassment, to assure equality of employment opportunities for all persons regardless of race, color, religion, sex, national origin, age and physical, or mental handicap;

acquire and maintain a general knowledge of EEO laws, regulations and procedures which affect the processing of discrimination complaints;

ensure that all efforts are made to resolve EEO complaints at the lowest possible level;

D. Area/Program EEO Manager

Area/Program EEO Manager serves as the principal advisor to the Area/Program Director in establishing, maintaining, implementing, and

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evaluating a continuing affirmative action program designed to promote equal opportunity. The Area/Program EEO Manager will ensure that:

- managers and -supervisors are advised regarding how EEO requirements are applied in IHS and given technical assistance in developing EEO related elements for performance appraisal plan;
- managers and supervisors are provided training regarding roles and responsibilities as prescribed by EEOC, DHHS, PHS; HRSA regulations and policies;
- every employee has access to information regarding rights and responsibilities emanating from EEO regulations and policies;
- a system is in place for processing discrimination complaints in accordance with applicable PHS procedures.
- proper solutions to EEO problems are recommended to management;
- there is coordination with personnel in the development of Area/Program Office's FEORP plan (as prescribed by EEOC, DHHS PHS, HRSA guidelines) by preparing AAP-plan components that are pertinent components of the AAP/FEORP plan, (e.g., work force utilization analysis and underrepresentation determinations), and ensuring that the AAP/FEORP plan is submitted to HQs for approval, and that annual Area/Program accomplishment reports are prepared;
- advice and support are provided to management and SPO on affirmative action plan preparation and program implementation;
- there is coordination with HQs EEO in implementing the EEO program.
- there is coordination with SPO and managers to identify and eliminate recruitment and employment barriers and prepare reports of findings and recommendations for appropriate actions;
- technical assistance is provided to the SPO in the development of special emphasis recruitment activities in support of the AAP/FEORP plan
- an Area/Program level monitoring and evaluation system is developed to monitor and evaluate AAP/FEORP program impact, and prepares periodic progress/status reports; .

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an internal operating system and process for determinations of underrepresentation is developed within their perspective Area/Program offices. In order to ensure that all candidates are treated equitably, a review is performed on any proposed personnel action intended to fill a vacancy, including details and promotions based on gradual assumption of duties. The review includes: 1) affixing signatures to all SF-52s (Requests for Personnel Action), PHS-1662 (Requests for Personnel Action - Commissioned Officers), accompanying OF-8s (Position Descriptions) and/or PHS-4392-1 (Billet Descriptions), and HHS-350 (Training Nominations and Authorizations), 2) where appropriate providing written comments, recommendations and/or clarifying information, and 3) forwarding the proposed action and documents where appropriate, through channels in accordance with agreed upon time frames;

the EEO Manager is actively involved in recruitment efforts to meet affirmative action goals and to assure adequate minority representation, including females and handicapped individuals and make appropriate referrals to the SPO;

proper and adequate files and records are maintained as required.

Personnel Officer

The Personnel Officer is responsible for the development of the FEORP plan and for obtaining EEO input to the plan. Each Personnel Officer will:

provide assistance to managers in developing the Area/Program FEORP plan and obtaining EEO and managers input to the plan;

provide assistance to managers in implementing Area/Program FEORP plans and eliminating underrepresentation within their organization;

obtain and analyze employment and vacancy projection data from managers to determine hiring opportunities and develop appropriate recruitment strategies and methodologies to increase applicant pools;

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- maintain information concerning available skills and composition of internal work force for planning and conducting internal and external recruitment efforts to locate FEORP target group members and increase applicant pools;
- identify resource allocations needed to, 'implement FEORP effectively and make maximum use of available resources;
- in conjunction with EEO and managers identify and remove recruitment and employment barriers. This includes recommending/deciding on areas of consideration to increase applicant. pools for vacancies in FEORP occupations, determining appropriate recruitment sources to provide applicants for targeted occupations, working with managers/supervisors to determine staffing requirements and identifying appropriate alternative selection procedures, etc.;
- monitor implementation of FEORP and collaborate with EEO managers in evaluating the impact of FEORP in increasing applicant pools and eliminating underrepresentation.

F. Managers and Supervisors -

The managers and supervisors are responsible for the implementation. of affirmative action and ensuring full development and utilization of minorities; especially women in the work force; explore innovative methods of removing barriers and traditional objections to employee self-development activities. Each manager and supervisor will:

maintain a work- climate that is free of discrimination,. including sexual harassment, to assure equality of employment opportunities for all persons regardless of race, color, religion, sex, national origin, age and physical or mental handicap;

acquire and maintain a general knowledge of EEO laws, regulations and procedures which affect the processing of discrimination complaints;

cooperate with EEO counselors, EEO complaint investigators and EEO officials when called upon to resolve complaints informally or to provide information or assistance at any time during the. processing of a discrimination complaint;

assure that EEO collateral duties are attached to incumbents position descriptions and incorporated in employee performance

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standards; and cooperate with EEO Managers in developing performance standards and making evaluations;

provide managerial perspective to personnel in the development of the Area FEEORP plan;

provide personnel with vacancy projection and recruitment information for targeted occupations, e.g., recruitment sources, contacts, etc.;

participate with personnel and EEO in implementing internal-recruitment activities and outreach efforts, such as job fairs, e t c .

coordinate with EEO and personnel in identifying and removing recruitment and employment barriers;

-coordinate with EEO and personnel to evaluate the impact of FEORP . in increasing applicant pools and eliminating underrepresentation.

G. Special Emphasis Program Managers

An Area/Program Office may designate one of more Special Emphasis Program Manager(s) to implement the following responsibilities:

Federal Women's Program (FWP) Manager

The FWP Manager is responsible for planning and implementing an equal employment program for women to eliminate barriers and problems that restrict the career development and advancement of women; The FWP Manager will:

- provide counseling services as well as directing women to other appropriate offices for counseling or employment, .promotional, and career planning needs;
- provide appropriate advice on EEO complaint procedures;
- educate managers and supervisors on the program's goals;
- communicate with managers about practices affecting the careers of women;

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provide and maintain a referral system for women of all grade levels for upward and lateral mobility;

assess employment trends to identify and eliminate underrepresentation of women;

9. publicize the program to women and maintain open communication and relationships with managers at all levels and with all employees;
9. collect; analyze, and disseminate employment data as it affects women, e.g. average grade, promotions, turnover, etc.
- II) participate in planning and implementing the AAP and other program objectives to resolve problem areas;
0. organize programs such as colloquiums, panels, training sessions and interagency meetings.

Hispanic Employment Program Manager

The Hispanic Employment Program Manager is responsible for planning and implementing an equal employment program for Hispanics. The Hispanic Employment Program Manager will:

- A. keep abreast of all recruitment activities to assure full coverage of all manpower sources, and provide access to Hispanic candidates;
- B. advise and assist in planning and implementing an equal employment program for Hispanics;
- C. participate in community affairs dealing with EEO in employment of Hispanics and/or other minority people;
- D. collect and analyze employment data as it affects Hispanics, e.g. average grade, promotions, turnover, etc.;
- E. identify paramount problem areas;
- F. participate in planning, developing, and implementing the affirmative action program and other program objectives to resolve problem areas;

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- G. publicize the program to Hispanics;
 - H. educate managers and supervisors on the program's goals;
 - I. counsel-Hispanic employees or direct them to the appropriate person for information on employment, promotional, and career planning needs;
- evaluate the progress toward goals for the program.

Handicapped Program Manager

The Handicapped Program Manager is responsible for planning and implementing an EEO program for the handicapped employees. The Handicapped Program Manager will:

- advocate hiring, placement, and advancement of handicapped individuals and disabled veterans by analyzing representation and encouraging utilization of these individuals in the work force;
- formulate EEO/AAP goals and objectives related to identified problem areas and designed to effect measurable results.

FEORP Coordinator --

The FEORP Coordinator assists in development of the Area FEORP plan and coordinates the implementation and monitoring of the plan. The FEORP Coordinator will:

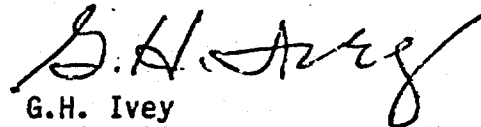
submits reports on the status of the plan.

EEO Counselor

The EEO Counselors will:

establish an open and objective channel through which employees and applicants for employment may raise questions, discuss problems or complaints and seek solutions to their particular EEO problem. The Counselor must be in a neutral position and serve as a bridge between the aggrieved person and management. The EEO Counselor is responsible to the EEO Manager for his/her counseling assignment.

7. ORGANIZATION. The Director, IHS, is the 'immediate supervisor of the HQs EEO Manager, and provides direction and leadership in promoting equal opportunity throughout the IHS. Each Area/Program EEO Manager is under the immediate supervision of the Area/Program Director with technical direction and assistance provided by the HQs EEO Manager. The authority and responsibility for coordinating the development of procedures for the effective implementation of this policy are delegated to the HQs EEO Manager.



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EEO AUTHORITIES

1. Organizations must not discriminate against individuals on the basis of race, color, sex, religion, national origin, age or handicap.

Title 29, CFR, Part 1613, Equal Employment in the Federal Government

Sets forth the regulations under which an agency shall establish a continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission will review an agency's program and entertain an appeal from a person dissatisfied with an agency's decision or other final action on his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

The Civil. Rights Act of 1964.

Amended by EEO Act of 1972 to cover Federal, state and local government.

Amended by Public Law 95-555 to expand the terms "because of sex" or "on the basis of sex" to include pregnancy, childbirth, and related medical conditions.

Part 1604.11 of EEOC Guidelines on Discrimination Based on Sex

On November 10, 1978, EEOC published its Final Amendment to Guidelines on Discrimination Because of Sex. The Amendment covered sexual harassment in the work place and reaffirmed that sexual harassment is an unlawful employment practice under Title VII (Section 703) of the 1964 Civil Rights Act as amended.

The Age Discrimination Act of 1967.

This law prohibits discrimination on the basis of age against persons between the ages of 40 to 70 except in the Federal government where there is, no upper age limit and the law applies to all persons 40 and above (based on P.L. 95-256 amended April 1978).

The Rehabilitation Act of 1973.

This law prohibits discrimination in employment on the basis of handicap (physical and mental). It requires reasonable accommodation efforts and affirmative action to employ and advance qualified handicapped individuals.

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2. Organizations must be able to show that their personnel actions are free from discrimination.

The EEO Act of 1972

This law amended the Civil Rights Act of 1964 to include Federal, city and local employment under the provisions of Title VII of the act. As a result:

OPM was given statutory enforcement power..

This act established the requirement that all personnel actions should be free from discrimination.

Required submission of annual national and. regional EEO plan by Federal agencies.

Empowered the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector.

Provided access to Federal courts for federal employees as a matter of right.

Equal Pay Act, 1963 amended in 1974.

This law prohibits paying workers of one sex at a rate that is different' from that paid to the other--sex when the work is the same. This prohibition also covers fringe benefits, overtime, sick and vacation leave, insurance, profit sharing and just about any tangible form of compensation that can be identified. This act was clearly designed to offset the traditional practices of paying women less for the same work.

This act covers Federal employees..

Uniform Guidelines on Employee Selection Procedures

Provides guideline for employees concerning adverse impact; validation procedures for selection devices used by employers; and documentation requirements.

3. Organizations must take affirmative action to eliminate employment imbalances which impact upon minorities and women.

Executive Order 11478.

this order required agencies to: 1. prepare written affirmative action plans for approval by the Civil Service Commission (now the Office of

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Personnel Management), 2. administer discrimination complaint procedures under federal regulations, and 3. establish and administer upward mobility programs. The key provision of this order may be its statement that EEO will be " an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal government."

Section 717 of Title VII of the Civil Rights Act of 1964.

On site Program Reviews (currently conducted by EEOC) are conducted to determine-if an agency or component of an agency is making every effort to create an environment which provides employment opportunities to all employees on a fair and equal basis. These reviews also provide a means of determining, if systems or employment practices are used, intentionally or unintentionally, to screen out minorities and women.

Public Health Service (PHS) Affirmative Action Program Plan and Federal Equal Opportunity Program Plan for Fiscal Year 1982 - 1986

Sets forth PHS policy on Equal Employment that the PHS is committed to the principle that every manager must maintain an abiding, vigorous dedication to equal opportunity in employment for all persons, regardless of their race or creed, their color or sex, their age, their handicap, or their national origin. Managers are expected to continue to apply the principle of merit when evaluating any-person who is working for, or who wants to work for, the PHS.

Establishes a basis for identifying, and pledges PHS to address, those institutional barriers which may impede or divert PHS management from pursuing its unbroken commitment to the spirit as well as to the letter of the law.

Establishes an AAP/FEORP plan to increase the representation of minorities and women throughout the PHS work force in order to reflect the diversity of the nation's population and to eliminate impediments to equal opportunity.

4. Organizations must establish and maintain recruitment programs that will enable the Federal work force to reflect the race, sex, and ethnic diversity of the nation as a whole.

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Title III of Civil Service Reform Act of 1978 (The Garcia Amendment).

This law requires each Federal agency to implement special recruitment programs to eliminate underrepresentation of minorities and women in the Federal work force.

This law also changed lead responsibility for EEO matters from the Office of Personnel Management (OPM) to the Equal Employment Opportunity Commission (EEOC).

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